

Application No. 10/077,997
Amendment dated May 6, 2005
Reply to Office Action of December 6, 2004

Remarks/Arguments

This Amendment is respectfully submitted in response to the Office Action dated December 6, 2004 ("Office Action"). It is timely submitted in view of the Petition for Extension of Time submitted concurrently herewith. Applicants respectfully request reconsideration of the rejections set forth in the Office Action in view of the amendments to the Specification and claims and the ensuing discussion.

Upon entry of this Amendment, Claims 1 - 6 will be pending in the application.

The disclosure was objected to for failure to provide a Brief Description of the Several Views of the Drawings. Applicants have provided the Brief Description of the Figures as an amendment to the Specification. Basis for the amended subject matter may be found within the Specification as filed at p. 27, l. 1-25, p. 27, l. 26 - p. 28, l. 20, p. 29, l. 5-28, p. 30, l. 1-10 and p. 13, l. 15 - p. 14, l. 14. Withdrawal of this objection is respectfully requested. The amendments to the claims find basis in the Specification at p. 6, l. 5-19 and p. 13, l. 22-26.

The Office Action rejected Claims 1-6 under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 4,670,781 to Aubert et al ('781) in view of JP 08100316A ('316). Applicant respectfully requests reconsideration of this rejection in view of the foregoing amendment and ensuing discussion.

The '781 patent teaches a method for demonstrating the effectiveness of slimming products or treatments in changing the shape of an individual. Rather, the '781 patent suggests using a video camera and an image analyzer to compare the images and measure the differences, or, alternatively, using positioning tools such as a turntable with reference markers to create images. The method described in the '781 patent requires that in order to perform these comparisons, the person being measured must be placed "in a position as close as possible to that occupied when the first image was taken..." ['781 Patent, col. 1, l. 64-67].

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The '781 patent does not teach or suggest the use of **three-dimensional** images to obtain accurate measurement of the same area of the skin for comparison purposes. Although, as the Office Action points out, Aubert mentions "carrying out a three-dimensional analysis by using 4 different viewpoints" [Office Action, p. 3], the method of applicants' invention surprisingly requires only **one** viewpoint to obtain three-dimensional analysis.

As amended, the claims require comparing **three-dimensional images** taken utilizing a **non-contact optical profiling instrument**. A non-contact optical profiling instrument provides the ability to capture accurately and reproducibly **three dimensional** images. Due to the nature of the instruments and the methodology utilized in the method of the claimed invention, the positioning of the subject is not as critical as with the techniques set forth in the '781 patent. Thus, one of ordinary skill in the art would not have been directed to the methods of applicants' invention in view of the '781 patent.

The abstract of the '316 publication does not remedy the deficiencies of the '781 in teaching one of ordinary skill in the art the methods of applicants' invention. The '316 abstract describes the use of imaging equipment to demonstrate the effects of underwear on slimming and lifting portions of the human body. Although the '316 abstract mentions the use of a "processor" to "process" the still picture image taken by the "television picture taking device", the abstract still requires the processor to store "the still picture images of the predetermined portions of the human body which are **taken from different directions**" ['316 Abstract, p. 1], in order to obtain the three dimensional image of the predetermined portion of the human body. Thus, the '316 publication still requires different views and different pictures to be taken in order to obtain the three dimensional image.

In contrast, the method of applicants' invention does not require taking several images from different directions in order to obtain a three-dimensional image for comparison with another image taken at a different time. Rather, the method of applicants' invention allows the taking of an image from one vantage point at one time in order to generate a three-dimensional image. Thus, neither the '781 patent nor the '316 publication, taken together or separately, would have led one of ordinary skill in the art to the methods of applicants' invention. Thus, applicants respectfully request

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reconsideration of the rejections set forth in the Office Action of December 6, 2004.

Applicants respectfully submit herewith a Supplemental Information Disclosure Statement for consideration.

Conclusion

For the reasons set forth above, Applicant respectfully requests reconsideration of all outstanding rejections. If the Examiner feels that a discussion with Applicant's representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicant's representative at the number provided below.

Respectfully submitted,

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